

● 695

Shluh MW11

[For further information on oaths when used for informal settlement of disputes, see Category 627; as used in a religious context, see Category 782.]

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This immediate datum is thrust upon the observer as on the users. In addition, for the analysis, it will be the best of the bases of departure.

Admittedly, difficulty begins almost at once. For if one indeed sees the basic unity, contrasting with the vehemence of the personalities that stand out from it, the investigation fails to press the contrast harder. For example, we do not know the Gedmiwa, a group of antiquity as venerable as the Seksawa, well enough for the comparison between the two to go beyond the plane of simple description. It is not yet possible to define seriously the culture of this Moroccan South-West, which asserts itself by characters as tangible as the speech or the very figure of the inhabitant. It is not yet possible to state precisely or to explain how, out of this homogeneity, particularisms /241/ sufficiently lively for their exchanges to be ordered in relations of external law are articulated.

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Here between the Lemgo, the Kattos, and the Atlasic arête is a mountainous quadrilateral some thirty kilometers on a side as the crow flies. At least four juridical identities are crowded there: Nfifa, Demsira, Dwiran, and Seksawa. And each one in turn is subdivided.

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The consistency of the amerwas, "matrimonial gift," the effective force of coswearers imposed according to the gravity of a litigation go from simple to double if the litigants do not belong to the same unit. Today the unit is the "tribe": Seksawa, Dwiran, etc. But this can also be, more authentically, what we call the "fraction," that is, the taqbilt. And there are seven or eight of them merely in Seksawa. Thus, in Demsira, the rate of the amerwas varies according to four-zones which apply the regime of exteriority to one another. In the case of a girl given to a Mtuggi, the chchard, stipulated marriage-settlement for the benefit of the bride, includes in certain taqbilt-s, and not in others, the obligation for landed property. In land matters, extracantonal testimony is not secured. Avowed reason: because the foreigner could not be well informed. But, obviously, it is because the group prizes its juridical integrity. Between different

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792 /322 conf./
[776] Sibā^c 1 is a saint whose memory survives at the zaouia of Taker-
kuzt (1).

1. Today submerged by the waters of the
dam of the Nffis.

to the S. of Marrakech, from where this volume comes. This
mu^cāchara that the exaltation of a young soul solicits is the
initiatory commerce.

128 Let us thereupon terminate the study of religious structures,
the outline of which would have remained inexact if, besides
their connections to the rural group, one had not also mentioned
what they let pass in sallies beyond this group. All that we can
say now no longer concerns the Seksawa, not even the Chleuhs
/Shluh/ as such. Let us give the floor to E. Dermenghem, ex-
plorer touched by Maghrebi holiness.

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A Juridical System

I. Techniques of Settlement

Let us go back some thirty years, that is, before the institu-
tion of the present Tribunaux Coutumiers /Customary Courts/.
That is little for a historical investigation. It is sufficient,
nevertheless, to reveal a triple order of phenomena, correspond-
ing to three layers of the social reality, as well as to three kinds
of techniques.

691 Let us first set aside the more or less important litigations in
[692] which the authority, jemāa, amghar, or moqaddem, arrogates
to itself the decision. The expansion of personal power is limited
here by a very strict tradition concerning the devolutions of com-
petence. As will be seen, it is above all a question of matters
concerning the public order, that is, bringing into play the in-
ternal structure of the group or its combination with neighboring
691 groups. A second category of litigations, the most common ones
695 in a rural society, is under the jurisdiction of sworn law. We

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- 691 have studied it above. It aims at re-establishing a distributive
- 695 integrity among riparian patrimonies, thus bringing into play an agrarian order on whose exact nature it has been necessary to reserve judgment.

423 Finally there are the conflicts of personal or landed-property
691 order. The procedure — it is indeed then a matter of procedure — is in two parts. The temporal authority, made cognizant first, brings about and records the agreement of the parties in the person of a muh'akim, most often a religious or scholarly individual. Who is this personage exactly?

Judgment or Arbitration?

623 The judiciary attributions in Chleuh /Shluh/ country are entrusted today to a collegial Tribunal. This is an extension of the
634 former competence of the jemāa, which customarily dealt with
619 only public law and the first phase of the judiciary instance
692 properly speaking. But this extension doubtlessly is not exorbitant of a lively communitarian tradition, which is explained by the fact that, in contrast to the feudal forms observed on the plain, it impressed the reformer.

[629] /324/ On the other hand, and on the historical plane, nothing permits affirming that in a number of epochs this extension of competence was not produced spontaneously. The demarcation between the natures of the public law and of the private law is tenuous since most of the landed-property litigations arise from conflicts between groups or subdivisions of groups, which is also the theme of the public life of the canton. Some written traces of settlements of this sort authorize the hypothesis.

/The following two paragraphs are in small type in the original source. / An act of 982 Heg.: 1572, concerning the well-known gens of the a. D'alh'a and some persons from Tawanghast, mentions that one of those interested "produced, in the bosom of the jemāa, the act of guarantee of his mother's dower," kharraja cala wasat'i'l-jamā'a. In this affair, obviously of private law,

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The expression s-tarad'i (1).

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1. Maghrebi ethnology will have made real progress when it is able to follow, over the whole gamut of North African societies, the progress of such-and-such a notion, reduced to its precise meaning, in the most varied linguistic dress; and corollarily to study the semantic variations of such an institutional term. I am thinking, for example, of the word chert' or chchard', or of the word ta^camamt, well known in the Kabyle matrimonial law, and which I find again in the Beni Iznasen (Renisio, p. 144), indeed even in an old text from the Sous ...

"by mutual agreement," certainly concerns the designation of the judge rather than the character of the verdict. It is true that even a judgment properly speaking, that of the present tribunals, for example, must little or much, in order to be executory, rally the yielding party. Ur rd'igh, "I do not agree": such an utterance occasionally indicates the nonrallying and hence also that the malcontent will appeal to other paths of recourse: obstruction, dilatory maneuvers, indeed violent resistance. Is it necessary to conclude that an arbitral aspect, profoundly ancient and authentic, has survived even in the modern organization of jurisdictions and that a fortiori the ancient s-tarad'i decision was merely arbitration pure and simple?... All that one can conjecture is that the development of the Chleuh /Shluh/ proceedings still implies today, and, with stronger reason, formerly implied, old mores rendering obligatory, under penalty of nullity or of loss, a "commitment" by both parties. This commitment has significantly taken a contractual form. In return, the distance at which the jemaa takes care to remain with respect to the settlement of the case screens the latter from the opinion of the group. And the reaction of the city procedures has cloaked the person of the magistrate and his

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manner of acting in a doctoral and formal style, the very one of an eminent justice.

Two Procedural Forces: The Writing...

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The classic Arabic verb istaz'hara, "to produce, to manifest the proofs of a law," is very often employed in the Seksawa archives, apropos landed-property litigations. In spite of its reassuring pedantry, I am not sure that it is not necessary to compare it with the practice that consists of reading the acts that the parties oppose on the spot of the litigation (gerri afella, "to produce against..." or factitive saghra, saqra, "to have read"). And perhaps even, at a more ancient stage, the act was purely and simply deposited upon the contested land. Hypothesis? The characteristics of efficacy not at all /328/ intellectual and mediate ("elements of proof"), but direct and concrete that the use of these titles offers naturally lead to this sort of hypothesis.

An immense red-tape flora, timidly rising from the end of the fifteenth century, already more fecund in the sixteenth century, subsequently spreads with more and more luxuriance. The Seksawa mountain is a conservatory of charters (1).

1. Cf. Et. in. /unpublished Study/ by B. de La Forcade, "Les actes en pays de coutume /Acts in countries of custom/, " CHEAM, applying especially to the region of Igherm.

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It happens that these old acts themselves make mention of the days of privation that a chest or leather bottle cost scholars for those salaried on the occasion of a trial. In 1193 Heg.: 1779, the a. Març, on the occasion of litigation, inventoried their acts. Cost: 5 mûzûnas-s in salary to the fqih, who had spent four days of work there! ... In general, the paper is thick and narrow, of heavy grain, and veritable cardboard in certain cases. Difficult decipherment, in view of the incorrectness of the language, both

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pédantic, and rustic, and the rudeness of the characters. To this proliferation of the writing corresponds the major judiciary role that it is made to play. A comparison with the neighboring fiqh /Islamic law/ will help one understand better how exorbitant this role is.

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212 In the fiqh, the act is only the materialization of the testimony (2).

2. E. Tyan, Le notariat et le régime de la preuve par écrit dans la pratique du droit musulman /The notariate and the regime of proof by writing in the practice of Mussulman law/, 1945, p. 5.

Its link with the human word is always present in that this word both offers solemnity (cf. the chahāda, in the sense of "profession," of "attestation") and must express sincerity. The Mussulman criticism of testimony will also oscillate between the two poles of psychological verification and control of form. Law of the human word, the fiqh will have no particular respect for autographic proof any more than it will for objective inquiry. It rejects, almost like two equal idolatries, the cult of the writing and that of the facts. Between the two, it will follow an elegant road, that of formulas well regulated and not at all inclined to formalism so much as to a certain precision of tone, fixed once and for all, and subjected to the double control of the grammarian and the moralist. The motives for infirmation will consequently be the impurity of the agent and the defects of the language rather than the inadequation to the real. The content of the "allegation," al-qawl, and the authority of the "allegor," al-qā'il, remain the principal objectives of the criticism. Therefore the system of proofs is hand and glove with the enchainment of tradition and the application of the essential norm, which is the "dominant opinion," machhūr. A remarkable unity of methods is manifest in all this. The same criticism of /329/ oral testimony presides over the imitation of the Prophet, the construction of the law, and

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theology. The ensemble forms an eloquent, seductive, affable, conquering whole, quite in the Arab manner.

Nothing of the sort in the Seksawa society. The acts, arrâten, rusûm, laql, constitute there the legitimating base and the ultimate recourse of all possession. The writing bears its force in itself, as worthless, as much a "scrap of paper" as it may appear. Perhaps because it extends the force of such individual attitudes: one has seen this in the case of the istir^câ. But moreover and especially because of its nature as writing. The verbal noun ara, "to write," is attested with the sense of "charm, talisman" in several dialects (1).

1. A Basset, "Six notes de linguistique berbère /Six notes on Berber linguistics/, " Ann. I. E. O., t. 5, 1939-41, pp. 16 sq., denies the nevertheless tempting relation between ara, "to write," and tiuri, "curse."

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The rural scribe, t't'aleb or lfqih, still today concurrently cultivates notarial activity and magical competence, at the same time that he exercises a municipal religious function, that of imam and schoolmaster. This characteristic pluralism has lasted up to our day. It reveals a confusion fraught with lessons between different orders of things that we would readily classify in strongly contrasted categories: official cult, communal organization, education of the children, notariate, more or less clandestine

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practice of magic. If one adds that Arabic, language of all these acts, has always kept in a certain measure the value of initiatory language and professional speech, one will measure the force that resides in these writings generously prodigalized today by the parties in the course of their litigations. Without exaggeration, one can estimate that, beyond its value as preconstituted proof, it is the act in itself that has an effect most often, ex opere operato, to speak like our Middle Ages.

The very material of the title counts at least as much as its content. In proof, sometimes, of the perfect vacuity of the latter.

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212 Such-and-such a jrída, "list of parcels," victoriously brandished
695 in support of a case, rests only upon the absolutely unilateral al-
legations of an ancestor: what belief would it merit in strict
212 proceedings? From that, too, the frequency of falsehood. In the
695 judiciary jousting, every expedient counts. What is falsehood
597 after all, if not a meritorious trait of craftiness, of concern to
give better proof, and, finally, of intelligence in the dispute?
More profoundly, if the force of a title consists on the one hand
of its very material, on the other hand, of the emotional inten-
sity that it reveals on the part of the usager or avowant — force
of the thing on one side, force of the person on the other, /330/
the distinction between false and authentic act will be only
subtlety. This is indeed what, even today, the litigants as well
as the judges confusedly feel.

695 The notion of oral testimony, on which the written act rests
212 in fiqh, could not therefore find total application here. On the
one side it is replaced, in case of conflict, by chirographic
proof (1).

1. Thus decided, in 1953, apropos a case
of this kind, the Tribunal coutumier /Cus-
tomary Court/ of the Seksawa.

695 On the other side, it is surpassed by sworn law: plural oath among
others. The "witness" is effaced before the coswearer. Here the
ordeal, there the human word.

... The Oath

One knows how much the cojuratio, by its still indicated
magical character, mixed with rough computations, has retained
the attention of our sociologists (2).

2. Summary bibliography and discussion in
J. Berque, "Les Ajwiba d'al-^cAbbāṣī /The
Ajwiba of al-^cAbbāṣī/," R. al., 1950, under
§15.

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- 695 Notably in the Moyen /Middle/ Atlas, its favorite milieu, they have posed it as the sole mode of proof. In Morocco, as in Algeria, it holds a place of honor in Berbère /Berber/ studies, which, according to general vagaries, seem not to have sufficiently circumscribed its aspects. Does Chleuh /Shluh/, and more precisely Seksawa, society, with its careful demarcations permit doing it? It will permit in any case, thanks to good fortune, the discovery of an act from the end of the fifteenth century, casting some light upon a considerable problem, that of the historical relations between plural testimony and the plural oath, cojuratio and laff, in Moroccan Mussulman law.

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784 In Seksawa the oath is above all a releasing of magico-religious forces. That is demonstrated by what I shall call "the exception of Aldebaran." No oath may be taken in the mountains before the period called that of Aldebaran (beginning of May): it is the one when the fructification of the almond trees is considered assured. If the interdiction is broken, the entire harvest will be lost. On the other hand, the oath, even an insincere one, remains harmless if it is taken by the Seksawa on the plain. No moral explanation, punishment for perjury or anything else is alleged. It is indeed, and almost expressly, the releasing of forces whose effect is feared. Let us note as a corollary that the a. H'adduys proscribe not only the taking of oaths, but the celebration of marriage, tameghra, during the critical period. The Idma, the Imt'ddan, the a. Lh'sen from above, the Iguntar also do this. Only /331/ the a. Abdella and the a. Musa escape the rule. Even among the latter, those from downstream forbid taking oaths before the ddurt feast of the Regraga in May. In the upper cantons, the interdiction extends not only to the taking of oaths and the celebration of marriage, but also to the solemn reading of titles to the terrain, which furnishes a nice confirmation of the views set forth above.
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/The following two paragraphs are in small type in the original source./ To return to the matter of the oath, let us again call on a commentary of the a. Lh'sen.

[Ait Lh'sen]

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[821] The oaths, they say, are so dangerous that it is forbidden to take them in certain particularly efficacious places. Such as the timezgida of Awines, the one of Tifesfas, the one of Iguntar, the sanctuary of Sidi Musa. The latter punished the perjurer, and his whole canton along with him, by a devastating storm. He is irritable. It suffices if some vindictive woman comes to scratch the soil of his tomb for him to unleash the wind. It would be necessary to surround this tomb with an enclosure opening with a key, without which we would remain exposed to these dangers. At Iguntar, no one dares to take an oath at the mosque. One goes to do it on minor, unknown Regraga saints, on the side of the agadir. The timezgida of Tifesfas, which one day rose from the soil completely built, caused twelve coswearers and their twelve adversaries to perish for false oaths: that for an affair of twelve dinars. Families that lightly wasted their cojuratio have been punished by perpetual mediocrity; thus the ait Bella of Ighilan. They one day dared to affirm against the a. Barka, descendants however of Sidi Musa, and by this title formidable, that they themselves had planted the contested olive trees; but they had been content to cut off suckers that they thrust into the soil. But the a. Barka, thanks to the help of their ancestor, confounded the cheats, who afterwards were in jeopardy to the point that today their stock is very close to extinction.

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571 This testimony from the a. Lh'sen curiously mixes naïve expression with reinterpretation. In any case, something else proves that the oath hides its virtue somewhere other than in its veracity. It is the fact that it is administered to a group determined in advance rather than to a person who has a resemblance to a witness of reality. The coswearers are invited to attest to things that they manifestly cannot know, that they have not seen, that they are reputed not to have been able to see. It is purely and simply their balance /Fr. appoint, money paying off an account, balance, change, odd money completing a sum/ that is required, and nothing else. This balance is identified with that of the group.
[602] It is the group itself, namely, in our region and today, the group

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- 695 of kin according to the order of decreasing agnatic closeness.
- 571 And even though it is the adversary who, as in certain cases, has
- (602) the choice of the coswearers to be supplied and who are then called mord'iyin, it is invariably these close ones that he designates: the very same ones who in fiqh would be challenged by him. Certainly, /332/ Seksawa law offers here less richness, less variety than other Maghrebi systems of law, where the structure of the group calls for, beyond the kinship factor, a consensual factor (1).

1. De Leyris points out, "Guide pratique de justice coutumière en aït Souab /A Practical guide to customary justice in aït Souab/," in CHEAM, the tulit, which would be a quinquagenarian group of people reciprocally owing one another assistance by oath, p. 9. The cosweaver who disappears can be compelled to comply by 5 oaths of the party concerned. One feels here a great richness in the nuances of the obligation of solidarity. See the interesting case of the "sacramental isolated one," ag^wmmam. In aït Mgild of Azrou, the foreigner can assign coswearers himself by a sacrifice (Coudino, "Le serment en a. M. /The oath in aït Mgild/, " in CHEAM, p. 13). It would be proper to point out here in the opposite sense, as a simultaneous advance of individualism and of "lumières" /lights, luminaries, enlightenments/, the case of the ag^wmmam, who solemnly exempts himself from any participation in a cojuratio. Cf. the interesting study by A. Adam, "Remarques sur les modalités du serment collectif dans l'Anti-Atlas occidental /Remarks on the modalities of the collective oath in the western Anti-Atlas/, " Hesp., 1948, pp. 299 sq.

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695 Besides it is possible that the diminution, at least following our
571 intervention, of the effective force of the swearers, formerly con-
siderable in case of murder, for example, has impoverished the
institution. Here are some datable indications that permit con-
jecturing so.

[175] /The following two paragraphs are in small type in the orig-
inal source!/. An act of 1257 Heg.: 1841, from the lower val-
ley and referring "to the time of the sultanian h'âkim Ibn
Abdeççadoq," that is, to a more or less makhzanian ambience,
constitutes a declaration of insolvency for a quinquagenarian
cojuratio in a murder case. This insolvency is certified
by twelve witnesses — the rate of the laffi: a curious point of
junction between two procedural orders.

175 An act of 1233 Heg.: 1818 (a. H'adduyws) reveals a trait dif-
695 ferently archaic. During the course of ceremonies not described,
613 but which doubtlessly were dependent on pacts of alliance, and
after a solemn declaration at the timezgida of Tasstuf (Sidi
Lah'sen u Tiqqi), subdivisions of ikhs of the Idaw Geryun fix
among themselves the order of taking plural oaths. A serious
action and involving the future. The a. Benfisa of Messdat speak
also in the name of their progeny to come. Protestations of mu-
tual and eternal pardon are exchanged. Finally, they agree on a
fixed order in which future ceremonies will be performed. First,
such-and-such a family of the a. D'alh'a (the a. Bubker) will
swear, then such-and-such another one of the same ikhs, in third
place the a. Benfisa of Messdat. "If they are required to swear,
they will mutually support one another."

[674] Such a text is important. It refers to oath-takings where the
agnatic family does not succeed in furnishing the allowed number
of coswearers; this is notably the case for criminal questions. The
present pact thus constitutes in certain respects a mutual assurance
against the imputation of murder. The alliance between a.
D'alh'a and a. Messdat suggests, besides, possible interferences
between a genealogical system and contractual agreements: the
prospects thus opened are rich. Now, the date of such a pact

175 /333/ is quite recent: barely from the last century, where it
 695 jarred as an archaism. Finally, the manifestation at the timez-
 613 gida, the use of Mussulman roots arousing religious notions, those
 of s.m.h', gh.f.r., ch.h.d., proceed from the tone voluntarily
 conferred on — or added to — the operation. In this pact of
 fraternity, a distant reminder perhaps of those that Berbère /Ber-
 ber/ antiquity mentions, notably for the Almohade period, it is
 remarkable that the sacramental initium thus assumed puts in
 first place two families of the a. D'alh'a. This is explained by
 their authority as descendants of the Seksawa kings. And outside
 of the case at hand, one thus catches a glimpse of interesting
 juridical hierarchies between ikhs-s, completing other hierarchies
 inherent in the agrarian order.

175 But here is what chills, if need be, the beginnings of primi-
 695 tivist enthusiasm on the part of the investigator. In an act from
 613 the same valley, much older, since it is from 981 Heg.: 1573,
 a fqi, Abdelâziz b. Brahim, renders an opinion according to
 which the enemy's testimony must be rejected. A moral criticism
 breaks through here. Some scrupulous ones state that they will not
 take an oath any more. Henceforth, no rule of kinship, no rule of
 performance will any longer be able to make them participate in
 a cojuratio. In 1206 Heg.: 1792, at Azend'o, a personage whom
 one feels to be pious and sedate attests that "he henceforth will
 not take an oath any more, either for his brothers, for his chil-
 dren, or for any other person. He is standing aside," radda nafsa-
hu fî jihat, and "is returning," tâb, "to God for the rest of his
 days." Such an individual evasion, such a renunciation of the
 social contract, seems to have been rarer here than in the Sous,
 for example, where it gave rise to a particular juridical form.

But what complexity, what anachronism in the matter!
 Criticism of testimony in the sixteenth century, scruples of the
 Géronte in the eighteenth, pact of solidarity in the nineteenth.
 Let us note this persistent trait of the system: the juxtaposition
 that it presents of the most heteroclitite, the most anachronistic
 elements. There is no doubt that the pact of sacramental frater-
 nity taken up by the Idaw Geryun groups is no more archaic in
 tone than a criticism of testimony. Now the second is in fact

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695 greatly anterior to the first: by several centuries! It is probable that these Seksawa societies permitted simultaneously institutions, minds of both forms, indeed impulses of one or the other genre within the same minds. Any genetic explanation consequently appears singularly suspect. On the contrary, what is likely is that this genre of contrast has existed all the time, and that this society, if one may say it, has looked upon it favorably.

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A Document on the Historical Relations Between the Plural Oath and the "lafff" Testimony

The Moroccan judiciary practice ended up by admitting a subsidiary form of "testimony," initially reserved for only the "just," ^Cadl. In opposition to this canonical concept, the lafff restored the statistical concept of any witnesses whatsoever, that is to say, close or complaisant (1).

1. Al-^CIraqi, "La preuve par témoins, lafff /Proof by witnesses, lafff/" Revue du Maghreb, 1939, No. 9, pp. 1 sq. ("Doctrine"). Question frequently approached in the Moroccan juridical literature. It is the subject of an entire treatise by al-^CArabi al-Fāsi in the seventeenth century. Cf. also al-Wazzāni, Commentaire de l'^CAmal /Commentary of the ^CAmal/, pp. 93 in fine sq.

Let us take heed, that was only the pure expression of a support of the group. Between the ordeal, which is the basis of the plural oath, and the moral criticism to which the religious law subjects the testimony, the lafff constitutes a sort of third position, influenced by the notarial practice. The latter being specified, one no longer discriminated between witnesses as "just," ^Cadl, and nonjust, but as professionals and private persons. At Fès /Fez/ this mode took some time to assert itself. Polemics on this subject prevailed throughout the sixteenth century. The lafff was

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195 constantly presented as a rural tolerance. Nevertheless the long and harsh controversy that took place for the admission of the complementary oath imposed by the cadi on the cowitnesses of the laff was perhaps dominated by an obsession to avoid in this testimonial mode, acclimated in the town with difficulty, anything that would look like the rustic ordeal.

One will measure from that what might be the weight of documents, owed to the hazards of discovery, that permit conjecturing with some chance of precision the passage from one form to another. This is perhaps the case for the following act, very ancient for this society: 899 Heg.: 1494.

[195] /The following two paragraphs are in small type in the original source./ It is composed of two titles. First a habous /wakf/ foundation, which begins in a pure epigraphic style: "Let all those who will come upon this writing know that ^cAbd al-Mu'min b. Abi Bakr u Alus assigned habous, etc." After the definition of the property by its borderers on the 4 cardinal points, and a redundant enumeration of the effects of the foundation, the act continues: Calāmu^cayanat il-bayyinat al-muzakkiyūn al-murd'iyūn Calāil-h'ubūs wal'-h'iyāzat wa'd-du^cā'i bi'lbarakat. That is, textually, "on the visual verification of the proof (sic): the accepted purifiers, with regard to the immobilization, to the tradition and to the invocation of the baraka, etc." These "accepted purifiers," that is, the coswearers of the closest degree (whether this degree might be kinship or contractual), are considered here as sufficiently well known for the scribe to dispense /335/ with enumerating them. Note the use of bayyinat in this personal sense, where it covers some term of Berbère /Berber/ law. Finally, no paraph, the virtue of the writing being deemed sufficient.

[212] The second act, joined to the first, is the transposition of it in laf. "Astawqafa (the son of the founder) requires for the proof the ones who have witnessed (sic) the habous in his possession, and whom his father took as witnesses astachhada in the above act which he indeed told them, etc." The son has the

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695 initial act, here called sijla, recopied "for fear of destruction by
175 wear," has it witnessed by six persons, and furnishes the whole with three rudimentary responsa justifying the operation. This evidently took place in the sixteenth century. In the space of the generation that had just passed, the insufficiency of the former oral stipulation, with magico-religious sanction, plunging into the solidarity of the jemā'a, and doubtlessly illustrated by the rite evoked by the word du^cā', has been pronounced. The son lives in a milieu with notarial preoccupations and formalizes the paternal foundation by reutilizing, but this time as witnesses, the names of former coswearers.

[128] Truthfully speaking, one isolated document could not sufficiently establish the hypothesis. The impropriety of the terms used by scribes knowing Arabic only moderately can moreover falsify the interpretation of the first text (1).

1. As-Suktāni, Ajwiba, ms. from the zaouia of the U^d Abdalmawla, who was interested in several of these technical notions as a result of the numerous epistolary relations that he maintained as consultant with the justiciables of tribes still plunged in custom, bāb ach-chahādāt, pp. 135 sq., seems to use murd'iy in the sense of "accepted witness." But this whole affair is extremely confused. Although allusion is frequently made to wathā'iq formularies, practice often stops at the single witness and at the interferences between the oath and testimony (p. 140 b.).

But quite disturbing chronological coincidences confer upon it a certain weight. It is known that the genre of the Formularies is a genre peculiarly Moroccan. Its vein runs throughout the cultural history of six centuries, from the Wathā'iq of al-Mattī^r to the recent commentary of the Fir^cūniya. At what time did this art

/335 cont./

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175 • penetrate the Sous? One points out a Kitāb ummahāt al-wāthā'iq from Daud at-Tamulī or at-Timlī, m. in 841 Heg.: 1438.

This date indeed appears to furnish the terminus a quo, and one will observe that it precedes by some fifty years the procedural shift that our two Seksawa acts reveal. This delay of transmission between the doctrine of a scholar from the Sous, probably the initiator or the popularizer, and the notarial practice of this remote canton is quite likely.

Notarial Role of the t't'aleb

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693 As for the role of the "just," Cadi, whom a pan-Islamic evolution has made a salaried professional, it is instructive to compare it /336/ to the one that the instrumentary t't'aleb plays in the western Haut-Atlas. Because there, too, there has been specialization, although in a completely different sense.

Certain tribes, among them the Seksawa and the tribes of the circum-Tichka in general, reserve the notarial capacity to only t't'olba attached, mulāzim, to the village mosques. Accordingly, they are endowed with the force that emanates from a collective unanimity materialized by such communitarian practices: meal of investiture, assessed compensation, etc. The wandering scholar and mendicant that this milieu likewise knows is thus kept from the notarial function, sometimes even in spite of the prestige of the person. A recent decision of the Tribunal coutumier denied any conclusive force to the paraph of an important marabout on the grounds that he was not a village imam, drawing up deeds in this village.

Near the end of the thirteenth century, a traveler depicted the inhabitants of the Sous seizing passing scholars in order to confer upon them the functions of village imam. Four centuries later, the Ajwiba of an-Nāçirī devote long passages to this institution. The adjustment that they point out between the compensation of this fqiḥ and the order of turns for water reveals an ancient and profound correlation between the system and the very foundations of this society. It is of little importance that the personage

794 /365 cont./ But the customary judge opposes to this
 428 exception /plea/ the necessity of establishing by "inventory,"
 (695) jida, the initial consistence of the properties on which the founda-
 tion bears. He opposes to it also — but since when? — the
 argument of peaceable possession exercised by the defendant, if
 nevertheless the claimant or his creators were present in the coun-
 try. Obviously no conclusion can be drawn from these /366/
 (177) practices. There are mixed together here preoccupations of equity
 (178) inspired by the French advisor, a concept of decennial prescription
 borrowed from the fiqh, and a general tendency toward the con-
 solidation of acquired rights. So many recent evolutions.

121 This geographic distribution perhaps marks different stages of
 794 the institution. In this hypothesis, the "purest" one would be
 found upstream, and especially in these three I. Mh'mud cantons
 where the land is entirely immobilized. It is possible that that
 would be the original stage. But if it is, it is necessary to recog-
 nize that the parties' freedom, by a curious paradox, went further
 in the matter than the fiqh wished. At least among the Seksawa
 an express convention of the devolutionaries can free the landed
 property. Is that a matter of an eventuality more theoretical than
 effective? This is impossible to specify. In fact, as is known, the
 settlement of landed-property affairs took place "under the sign"
 of the fiqh and in any case in a climate completely different
 from that of the conflict. Therefore no jurisprudence that was not
 (173) suspect of transposition at the very least. As for the oral tradition,
 today very much impaired by the progressive disappearance of the
 old people, and the influence of recent organizations, it becomes
 very subject to caution as soon as the problem becomes nuanced.
 It is too stuttering for one to be able to base anything precise on it.

794 One thing is sure, however. These foundations are subordi-
 428 nated to the stipulation of a "reserve" or "margin," lh'achit, to
 671 which the habous does not apply. This portion of the landed
 (562) property remains subject to the common law. The women benefit
 (184) from it, either by having it available as property or by only enjoy-
 ing the usufruct. On these points the variety is very great between
taqbilt-s and expresses complex evolutions. Nevertheless, and in
 all cases, the absence of lh'achit is a nullity. In a milieu as
 bereft of precision concerning the notarial practice, one weighs
 what this formalist rule will bring in the way of surprises in the
 course of proceedings. Quite often this unforeseen new thing will

/370 cont./

592 /conjugal family/, that constitutes the basis of the distributions as of all the tumultuary or accountable manifestations essential to this life.

613
182 The role of the ikhs stands out at the very least from its present functions: primary distributor of water and, if I may venture to say it, of baraka; member of a hierarchy of qualifications reserving for such-and-such a lineage the right to undertake important actions with common value, which involve the collectivity, its soil, its past and its future. Its function exists primarily in all that the course of the group respects in the way of necessities, more or less clearly felt, in accord with nature, in connivance with the kosmos and its unwritten laws. Therefore war, politics, the agrarian order, and in a certain measure holiness, justice, or poetry are a gentilitial affair. These attributes are well mixed. We do not know which among them go back to the past or result from restorations or adjustments. One of course would be tempted to consider the magico-religious functions as belonging to the oldest substratum (1).

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1. P. Huvelin, "Magie et droit individuel /Magic and individual law/," Ann. Soc., X, p. 12, shows that the repression of misdemeanors in a society dominated by familial representations /this footnote is continued on the following page in the original source/ still remains religious in accent and commonly assumes the form of the ordeal. The mad exuberance of the sworn law in the old Maghrebi societies certainly evokes the existence of ensembles that, in this case, are agnatic ensembles. One has the explanation that, in Marcy's eyes, this aspect constituted a criterion of archaism, that is, according to him, Berbère /Berber/ authenticity. According to this view, the public law would then consist in organizing relations between

/370 cont./

/footnote 1/continued/ familial groups with-
in the political society. The fact is that the
oath often has this aspect. And that is so
true that, the group growing larger into the
raqbilt, for example, it would be other tariffs
that then function in the cojuratio. But one
is also struck by the traits of decline or re-
treat of a familial law thus profiled, or, what
amounts to the same thing, by its unequal re-
sistance to the legalistic Mussulman influences,
from which, in short, the public law in the
strict sense of the term has much better extri-
cated itself. Of the two, it is the latter that
has had the major influence, to the point,
undoubtedly, of reacting upon the other.

/371/ But on this same plane there are two recoils, unless
they are original lacunae. First of all, let us repeat, this society
with ancestors has never reflected in its hagiology what is re-
flected in other systems similarly organized. Another negative
remark: in this penal law, so well attested to during the four
centuries that one can study it, sanction is always of public order,
without the notion of private vengeance or of responsibility of the
ikhs ever cropping out in it. This is important. One of the best
studies of Berbère /Berber/ law, that of Hanoteau and Letourneux,
has given much space to completely contrary aspects. A sharp
difference with the western Haut Atlas stands out from what these
authors say proceeds from a law of the family as opposed to that of
the village: all these juridico-sentimental motive forces that the
reqba, the Canāya are, all this code of virile honor that occupies
such an important place among the Kabyles (1).

1. M. Daumas and M. Fabar, La grande
Kabylie /Great Kabylia/, 1847, already
contrast the vendetta to the dîf, as signs of
two radically different systems, p. 35. These

/388 cont./
 671 of the person: shares of benefice of a saint, tisura (trans. of the
 675 Arabic futūh'ât), of the right to mutual assistance, tiwizi, of
 421 "protection," etc. There one /389/ is at the very antipode of
 182 what one imagines of an "ancient" law.

What is to be said about this division of labor that not only
 671 qualifies, in the landed-property procedure, judges outside the
 182 group, but jealously denies competence to the temporal chief?
 [692] These careful delimitations, although undoubtedly from the most
 authentic foundation of the Chleuh /Shluh/ society, appear ir-
 reducible to archaism. Nevertheless the splitting of the judiciary
 instance obeys exigencies of recourse to the outside, of pause in
 the course of the joust, and, in short, of rejection of responsibility
 by the group, which express obscure traditional sentiments. This
 gives rise nonetheless to a procedure of scholarly type, written and
 aspiring to cityness. Traits undeniably "advanced": condemna-
 tion by default that the codifications anticipate, fine for nonexecu-
 tion of the sentence or for failure to answer a summons, this last
 motif recurring constantly.

681 The penal law, up to a very recent period, has been admin-
 182 istered by the jemâa. The latter has never really given it up. It
 [634] is even for this purpose that it deploys the most initiatives and
 most willingly exercises its legislative function. But let us note
 that this penal law, based on pecuniary composition, a composi-
 tion duly tarified, evinces a singular institutional maturity.
 While the gentilitia structure inspires the agrarian order, it is
 effaced, in the penal one, before something that is clearly of
 the public law, and felt as such.

695 The plural oath has retained its role. It concludes all litiga-
 182 tions that the writing does not determine. But this restriction is
 [691] already quite important. And moreover, even where it keeps all
 its value, the oath has been driven into a reduced position: no
 longer of sworn law -- but of a second element of a procedure
 begun on an intellectual and profane plane. The richness of the
 elements of magico-religious order that one finds here and there
 in this part of the system cannot efface the contrary aspects,
 which are also striking. Certainly it is possible to suppose that

/389 cont./

- 695
182 the role of the jusjurandum was formerly more extensive in the system before the introduction of the Arab notarial art came to disturb its economy. But one has no reason to eliminate as "recent" the character of laicity that the course presents and which is attested to for several centuries. The disconnection, in a way, of the function of the oath, which, an immediate technique of settlement, has become, in the heart of a procedure, the competitor of the writing, denotes in the present stage the trace of a profound and ancient regression of the sacred.

/390/ Divergences Between the Evolution of the Religion and That of the Law

- 121
[776] But would we not observe a regression of this genre in hagiology? Between the historic heroine who rules the Seksawa and the anonymity of the local sanctuaries, no intermediary stage. To what is the fact to be attributed? To an original character or to an acquired evolution? And, in this second hypothesis, to the progress of a community in love with classifications, to the decadence of the creative faculties, or to the logical expansion of monotheism? We know nothing about it. However that may be, it indeed seems that at a certain period there took place a simplification of this society, a lopping of the autochthonous spontaneities, and that that is to be put in relation with such a trait, still to be discovered, of the reception of Islam in the Haut Atlas.

- [63] It is undoubtedly the agnatic group, as ritual person as well as juridical person, that bore the cost of the transformation, or of the decadence. Whence the discordant and anomalistic character that its survivals or its reappearances assume today. But the void thus created has been diversely filled by law and religion.

- 776
795 At the base exists a swarming of observances most often exclusive of personal support, and we have even recognized there a sacred of strictly communal foundation. The religious and social here go so far as to become identified. On a superior stage two or three figures of saints, common to all or part of the Seksawa,

/425 cont./

616 is transposed to a wholly moral plane, the "law" is observed in
121 most of the societies (2).

2. Cl. Lévi-Strauss, "La politique étrangère
d'une société primitive /The foreign policy of
a primitive society/," Politique étrangère,
1949, p. 151; "Histoire et ethnologie," Revue
de métaphysique et de morale, 1949, pp. 373
sq.

It assuredly accounts for multiple Maghrebi facts, but, let us keep
in mind, less in their specificity than in that they obey an almost
universal dialectic. Now, what will interest us here/is in what
and how these formations are Maghrebi.

616 One could argue that the Arabic word leff belongs to the local
192 vocabulary (3),

3. Les Textes arabes du Sous, by Destaing,
mention the word in the index, but it does not
figure in any text. Cf., however, Sources in.,
Port., first series, t. III, p. 199 (apropos a
confederation of tribes).

if it were not found again in an incontestable document, a letter
from the amghar Umulid, in the sense of "party," of "coalition,"
this itself from the Chleuh /Shluh/ word amqqun, from the root
qq.n, "to bind." But amqqun is understood here as the military
alliance, either a lasting coalition or an episodic combination in
view of an expedition. The more general group-to-group relations
are rendered rather by the qualification of aitma, "brothers."

571 These are "fraternities," creating or verifying an imprecise, but
616 bilateral obligation. Their force, diminishing in proportion as its
695 field of application is extended, is locally connected with that of
collective solidarities that are exercised on the occasion of plural
oaths. The latter, it is true, involve in the first place the agnates.

/436 cont./

preceding notations will suffice to support a judgment, moreover above all critical. It is legitimate to conjecture a constant fluidity between denominations of groups habitually distinguished by the user as well as by the research worker. The surprising thing is not that interferences should be produced between agrarian or urban confraternities, corporations, territorial cadres and genealogical systems. It is that they should be so numerous. It is that they coexist with an evolution that belies them on many grounds. [171] Between forms such as tribe, confederation, league, coff, leff, party, even qualifications within the hierarchies of the profane and of the sacred, the exchange has been perpetual in North Africa, and still continues.

Morphological Thresholds

Let us return to the native interpretation. It brings together the fraternity of leff with that of blood or of the oath. This proximity may be attributed to the decadence of the types. But let us note that many of the traits that in our view distinguish these three notions amount to a morphological variation linked to the broadness of play. From the least broad cadre: this ground where, the patrimonies are organized, to the broadest: the whole section of the Moroccan South that covers the chessboard of the leagues, several thresholds are interposed. Each indicates a changing of social rhythm.

As has been seen, on this side of the first threshold, the small taqbilt of the Haut-Atlas prevails. It forms its agnatic subdivisions without anything /437/ being interposed between their strife and its order. This is not to say that this strife, in certain respects, does not go beyond internal law. But the ikhs indeed has the feeling of consanguinity, and many of the conflicts that it has with the other ikhs-s are amenable to sworn law. The cadre of the taqbilt, although it carries within itself an explosive force, moreover owes to its agrarian correspondences an exemplary distinctness. (Opposite to this, the genealogical tribe never offers in North Africa, we believe, as pure an example.)

1: Berque--654 Z-5 (ca.1950)1955 MW11 Shihub MW11

Pl. VIII

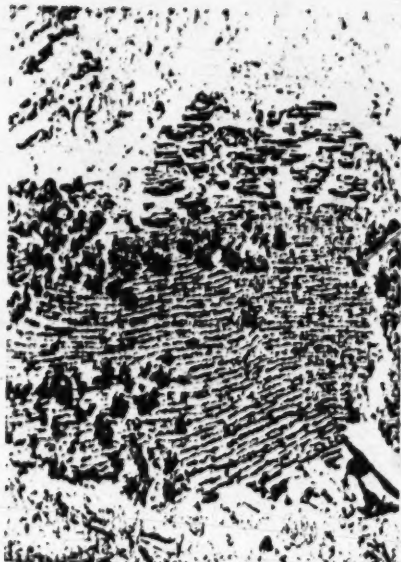
133
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Cl. L. Berque

The Uwines timezgida (a. Lh'sen)

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361



Cl. Mohammed b. Lahsen

Benches at Usikis (Idma)

/The complete caption for Pl. VIII is given on p. 656./

Plate VIII:

133

/On the left/ Benches at Usikis (Idma).

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*This colossal stairway continues toward the bottom, which the rocks in the foreground hide. The houses of the village are glued to the slope. They are agglomerated by familial ensembles.

[592]

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/On the right/ The Uwines timezgida (a. Lh'sen).

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This "mosque" is a particularly redoubtable place of oaths.

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Plate IX:

241

/At the top/ Tamd'a Ugenni (Iguntar).

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This "ritual place," consisting of a simple cylinder of stones

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and branches, plays an important role in the agrarian life.

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/At the bottom/ Panorama of the village of the ait Mh'nd.

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This is the largest agglomeration of the Seksawa: at the

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same time, this little taqbilt concentrates to a remarkable de-

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gree of synthesis, the density of habitat (600 grouped inhabitants)

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and the social organization. One distinguishes in the village

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some quarters corresponding to the grouped residences of each

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ikhs, which is an almost unique case. The peak that dominates,

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the "White Rocks," imellulen, is the site of an annual feast, with

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anonymous sacred part. Perfection of tiers and horticulture.

/49 cont./

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[778]
[619] Seksawa, Sidi ou Sidi of Taroudant, Sidi Sa'id Ou 'Abd en Na'im of the Haha, and especially Sidi Ahmed Ou Mousa of the Tazerwalt, see numerous tribes of the same race assemble each summer around their roofs of green tiles. These saints thus belong to very large social groups made up of one or several confederations. It is they whom one invokes from a great distance to implore their protection or swear certain vengeance on an enemy. Kaid and chiefs driven from their homes, assassins in flight, come to seek refuge near their tombs, and the poets who address themselves to a large audience do not fail to call off their names before improvising their songs.

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[619]
[778] The marabouts of the tribes are less famous, but their role remains considerable. They have often left near their tombs numerous descendants, heirs of their "baraka" /Berber term indicating the quality of holiness/, who are invoked as arbitrators in internal struggles. Their qoubbas /kubbas/ are the rendezvous of the coswearers whom Berbère /Berber/ law requires to assemble in cases of murder or theft.

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[778] /50/ Finally come the saints of the cantons and villages, whose names are sometimes obscure and enigmatic. The latter sometimes reveal their presence only by the existence of magic trees, sacred springs, or simple piles of stones. But their usefulness is no less. They protect the harvests, frighten thieves, and people put under their protection the cut wood, the plows, or, on the coast, the oars of the boats and the nets; they make the walnuts and olives ripen, provided that people come occasionally to celebrate near them a common meal accompanied by dances and songs. Little girls come to sleep on their tombs, in order to learn how to spin without effort; married couples, mounted on a mule, turn around them seven times in order to escape bad influences. It is through these unchronicled minor saints that the bond of Berbère /Berber/ Islam with the ancient beliefs, preserved more faithfully by the memory of the women than by that of the talebs, becomes manifest.

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178 As a matter of fact the new religion has not succeeded in making the old naturistic cults of former times disappear

/229 cont./

*634
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692 VII. The justice circuits. -- When the cantons are thus grouped so as to constitute a veritable tribe, made up of a certain number of small autonomous units, they often proceed with circuits of justice carried out in the whole territory, in the course of which all the infractions committed during the year are investigated and punished. All the forces of the tribe then come to lend their support to each of the cantons, in order to facilitate the rapid settlement of differences without any danger to internal peace resulting from it.

*634
619
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178 This custom, observed not long ago among the Igezzoulen of the western Anti-Atlas, is still very much alive in the confederation of the Ida Ou Tanan, among the Aït Ou'azzoun and the Ifesfasen. The circuit of justice is carried out by following a minutely observed ceremonial. Among the Aït Ou'azzoun, for example, a tribe made up of 15 "afous" or fractions, each "afous" first assembles ten Aït Arba'in, who designate a representative. The 15 delegates of the "afous" thus named deliberate apart and form the /230/ council of the "imzran" (1),

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1. From the Berbère /Berber/ "zer," to see. The word, like that of Aït Arba'in, has no singular. In order to designate one of the members, one says "ian gh imzran," one of the "imzran."

while the mass of the Aït Arba'in of all the fractions together constitutes a police force capable of having all the decisions carried out. The whole takes the name of "ajmo'a" of the Aït Ou'azzoun. Thus formed, the "ajmo'a" goes first of all among the Aït Wanzig, who are the "inflas el khir" or "porte-bonheur" of the Aït Ou'azzoun tribe. For a day and a night the council investigates all the cases of theft or murder committed during the year and of which an account has been carefully kept by the notables and which the taleb has noted in writing. The guilty are summoned, heard, condemned to be fined, and they pay on the spot.

• [695]
[681]

* 634 /230 cont./

614 pledges consisting of a certain number of guns. If the guilty
692 ones are marabouts, who do not have guns, they pay a fine in
184 the form of animals destined for the common meals. The next
178 day, the "ajmo'a" moves on, following a traditionally fixed
• [695] itinerary, and stops for two or three days, according to the size
[681] of the fractions. One night is spent at the zaouia of Sidi Brahim
[792] Ou 'Ali, religious center of the confederation, where a solemn
[782] sacrifice is offered to the saint. Finally, the circuit of justice
ends in the cantons of the north, and on the last day, at the
zaouia of Issouqal, the guilty ones come to pay their fines and
take back the guns they had pledged. The marabouts who played
[431] the role of conciliators or advisors receive gifts, and a sacrifice
[782] is offered to the saint of Issouqal. Then the remaining money is
[652] immediately divided into two halves; one goes to the "imzran,"
the other to the fractions represented by the A'lt Arba'in.

One conceives what difficulties are presented for making
order prevail in the small republics incapable of naming moqad-
dem, and which cannot, in order to put an end to the disputes of
rival "ikhs," always threatening, unite with their neighbors to
carry out circuits of justice with large forces. Left to themselves,
they become sources of agitation and private wars, unless a
leader succeeds in imposing his will on the turbulent assembly of
the A'lt Arba'in. Among the Ida Ou Tanan such is the fate of the
isolated fractions of the A'lt Wanoukrim, A'lt Oulma, Iberouten,
in the tribe of the Ifesfasen, which possess neither moqaddem nor
powerful "ajmo'a" capable of having /231/ the decisions of the
notables applied. The inhabitants try to constitute, after a
fashion, by their own means, an "ajmo'a" to which come all the
men under arms; but for lack of a tradition as respected as that
of the A'lt Ou'azzoun, the "ajmo'a" often ends in fights.

* 634 A similar example of impotence is given us in the heart of
184 the Masmouda country by the little "taqbilt" of the A'lt Tigidar,
in the Asif el Mal, also endowed with a democratic constitution
without moqaddem, amidst neighboring fractions that are more
[578] pacific and better organized. Discords multiplied to such a point
[361] in this small territory that the village of Assals, political center

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11
(ca. 1900)

TRADITIONAL RURAL SOCIAL STRUCTURE

89

as the '*adat*' or '*urf*', the distinction between these two words being somewhat confused. Customary law is consulted in all civil cases (such as disputes regarding terrain, water rights, inheritance, etc.), and in minor criminal matters - the customary law having been replaced by a French-sponsored penal code in most aspects of criminal law since the establishment of the Protectorate. This customary law is established and revised by the local representative councils of each region; it may be administered either by them or by a designated arbiter (*annezzarfou*), this arbiter being required to have a great knowledge of the local law, and to be an intelligent and experienced man highly regarded by all. If possible, he should be a stranger to the group involved, or else divorced from its mundane affairs by virtue of being a holy man (Johns Hopkins University, 1956, pp. 231-232; Loubignac, 1942, p. 281). 671 (177) (692)

The most important aspects of the *azrif* are water rights and (formerly) penal crimes such as theft, abduction of women, adultery, wounds, blows, and murder. Water rights are still carefully regulated by the '*urf*' or customary law of each group. Among the Beni Uriaguel (99), for example, the *qanuns* or edicts of customary law dealing with irrigation carefully take into account the nature of flow in different rivers. Thus, on the Lower Rhis, in the Plain of Alhucemas, where the flow is constant but not altogether sufficient, the *qanuns* state that any man who purchases land must buy his irrigation turn independently. In the case of the Nekor River which is extremely erratic, the *qanuns* provide that the purchaser of land is automatically entitled to irrigation water, because most of the year there is sufficient quantity for all. Throughout the Berber areas litigation regarding water rights is kept at a minimum through the existence of water administrators (known as *amazzal*, pl. *imazzen*, among the Shluh) who distribute the irrigation water in accordance with the recognized rights (Hart, 1954, pp. 56-57). 671 312 (674) (691) (624)

In its application to criminal acts the Berber *azrif* was characterized by great dependence upon oaths and upon the imposition of fines. This first feature (oaths) was the principal reason for the Berber court usually meeting in a mosque or at a market with an associated shrine, for in all cases the litigants swear by something to give efficacy to their oaths, and this is generally something which has 695 (681)

- 695 great *baraka* (religious power or blessing) – such as the Koran, the mosque itself, or a saintly shrine. In Berber customary law, however, the oath is employed not only for its supernatural consequences, but also as a legal device, that is, the oath is used in judicial proceedings as a means of establishing the guilt or innocence of a person accused of a crime, and may be taken either by the accuser or by the accused, or by certain other persons who, in addition to the latter, swear to his innocence as conjurators. This procedure, 171 which is also found in Moroccan Moslem law, has been described by Westermarck (1926, Vol. 1, pp. 509-510):

In Fez, for example, if a person (A.) accuses another person (B.) of theft and the latter disputes the accuracy of the charge, A. says to B., "Come then with me to the governor". The governor asks A. if he can produce witnesses, and if he can do so, sends a soldier with him to hear the evidence. If more than two persons bear testimony to B.'s guilt he has to compensate A. for his loss and pay a fee to the soldier or is otherwise thrown into prison; but the witnesses do not appear before the governor, nor are they sworn in. If they simply testify that B. has stolen something from A. without stating the amount, the latter has to confirm his accusation on oath. Again, if A. declares that he cannot produce witnesses, the governor says to B., *Hälf lä*, or, *A'teh haqq lläh*. If B. obeys and swears to his innocence he is acquitted and has nothing to pay. On the other hand, if he refuses to swear, saying, *Qläbtsä ällh*, "I turned it on him", the governor asks A. if he is willing to swear that B. is guilty. If he swears, B. has to pay or, if he does not pay, is put into prison; but it may be that A. has to swear twice, since B. may insist that A. shall not only swear to his guilt but also confirm by oath the amount he has stolen. If A. says that he cannot take the oath demanded of him because he did not see the commission of the theft but only heard of it, or that he strongly suspects B. of it, then B. has to swear or, if he refuses to do so, is compelled to pay or is thrown in prison...

- 695 Among the Berber tribes the number of conjurators varies according to the gravity of the alleged offense, and includes the accused person himself and male members of his kin, including young boys – this being a consequence of the concept of the collective responsibility of kindred and their duty of mutual assistance. Thus, among the Beni Sadden (64),

... the *imgilla* [conjurators], as they are called, are five in case of theft, and one of them, called *amnqqar*, is chosen by the accuser. The latter decides where and how the oaths are to be made, how many and who

among the *inggilla* have actually to swear, and who is to swear first; and it may be that only one of them is required to swear. In the case of homicide the *inggilla* are fifty, out of whom ten, called *innqqarn*, are chosen by the accuser. If any of these refuses to swear, the suspected person is considered guilty of the crime; hence it frequently happens that the accuser by bribery induces some kinsman of the latter to refuse to act as conjurator. If a theft has been committed the evidence of witnesses is accepted, but they must actually have seen the commission of the theft and they must all be men. In the case of homicide, on the other hand, testimony can bring about conviction only if the perpetrator of the crime is publicly known... (Westermarck, 1926, Vol. 1, pp. 511-513).

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Not only did the nature of the alleged crime determine the number [692] of required conjurators, but also the nature of the adjudicating body. Thus Coon (1931, pp. 99-106) found the following division 000 of responsibilities among the councils of the Rif.

Village Council

Theft of eggs and of poultry,	Failure to repair irrigation ditches,
Theft of maize,	
Illegal cutting of maize in adjoining terraces,	Failure to provide for exiles from other <i>fifths</i> ,
Breaking branches of fruit-trees,	Failure to contribute to entertainment of councillors of other tribes,
Trampling vegetable gardens,	Entering council chamber unbidden,
Theft in orchards,	Conversing with women,
Illegal starting of grape picking,	Entering a cemetery occupied by women,
Illegal picking of windfall olives,	
Theft of olives,	Entering a saint's tomb occupied by women,
Trespassing in order to pick grass,	Fighting with the hands,
Letting stray goats and cattle in the cemetery,	Speaking to the enemy.

Commune Council

Failure to support village council,	band does not discover in the act,
Entering a women's market,	Theft of livestock,
Adultery which the injured husband does not discover in the act,	Fighting with sticks,

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754 punishment could place himself in the protection of a prominent person by entering his tent or grasping the tent-pole at the entrance and exclaiming, "I am in God's 'ar and your 'ar," or, "I am seeking refuge with your children." The owner of the tent is then obliged to assist him, at least by acting as an intermediary between him and his pursuer, or by speaking to the *caid* or governor on his behalf. The pursuer, in such a case, cannot try forcible to remove the fugitive, but must apply to the owner. A similar custom prevails among the sedentary populations residing in houses. A fugitive could also place himself in the 'ar of a woman by touching her, sucking her breast, sitting down in front of her, or running into her house and taking hold of the handmill; her husband and family then being obliged to help him. He could also place himself under the protection or 'ar of an entire village to which he has fled by crying, "I am seeking refuge with God and You, O Community", or by seeking refuge in the village mosque. Mosques generally, however, are not as safe as saints' shrines, for an individual seeking refuge in a shrine came under the 'ar of the saint. In the Arabic-speaking area a fugitive frequently used 'ar to obtain a pardon from the authorities.

- 571 This alliance mechanism could, however, be used not only by the
754 defendant in a civil or criminal case, but also by the plaintiff. Per-
• 695 sons who had suffered damage or injury, or had had a relative murdered, and were unable to protect themselves or obtain vengeance, secured aid by casting 'ar upon other individuals or upon various social groups. This could be done by hanging an earthenware pot around the neck and entering another person's tent or house; by turning the handmill in this person's tent or house; by placing a saddle upside-down at his door or sacrificing an animal there; or, in the case of women, by cutting the hair, blackening the face, covering oneself with rags and cow-dung, and passing from village to village asking for aid - the latter being a particularly powerful form of casting 'ar which cannot be refused. Among the Beraber a person may cast an extremely compulsory kind of 'ar by taking his little son or daughter to the house of the leading man of a village, or to the mosque, laying the child across the door, holding a knife over the artery of the neck, and threatening to kill it if the

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11
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help asked for is refused. An individual may also take an unmarried daughter into another man's house and invoke his assistance, saying that this is 'ar upon him. The girl is then left there until the owner of the house and his friends have satisfied the request (Bruno and Bousquet, 1942, pp. 361-362; Westermarck, 1926, Vol. 1, pp. 520-530, 560-561). 571
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The use of 'ar, however, is not restricted to persons engaged in civil or criminal cases, but may also be employed by public bodies, or their representatives against such individuals. This is illustrated by usage among the Ait Youssi (234-236), Westermarck reporting that in the event that a murderer and his male relatives in the patrilineal line have fled, unrelated elders in the village attempt to postpone the blood-feud by casting 'ar upon the victim's family – either by sacrificing a sheep at the grave, or descending into the open grave itself while scribes give recitations on the behalf of the still unburied deceased. Through this, and the intervention of still other people, the relatives of the deceased eventually agree upon a period of truce; before the expiration of this truce the homicide or his relatives have a *sherif* or other influential men again cast 'ar upon the family until such a time as they are willing to accept blood-money. 'Ar may also be cast by the inhabitants of a defeated village upon the members of the victorious group for the purpose of ending the conflict – individuals of a third village or holy men acting as the mediators (Coon, 1931, pp. 105, 162-163; Westermarck, 1926, Vol. 1, pp. 530-532). [627]

An outstanding example of the use of shame compulsion to secure protection is provided by the *ksour* inhabitants of the south, these placing themselves under the protection of a neighboring nomadic tribe by the ceremony known in Arabic as *debiha* and in Tashilhait as *tigarsi*. Another example would be the practice on the part of Jews in Berber areas of using 'ar to secure a Moslem protector or patron (La Chapelle, 1929, p. 37).

The third type of alliance – known among the Shluh by the term *ameqqon* ("relationship, alliance"), among the Beraber as *tagmat* ("brotherhood"), and among the Zenata as *taimat* ("brotherhood") is concluded between single individuals or families who desire to establish a mutually profitable relationship legally equivalent to that 571
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